IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

SECOND APPEAL NO.156 OF 2007

Rajaram Ganpati Kale,
deceased legal heirs:

1a. Shri Ramdas Rajaram Kale and others .. Appellants

v/s.

Babu Ganapati Kale,
deceased legal heirs:
1a. Punjabai Baburao Kale and others .. Respondents

Mr. Kishor Patil for Mr. P.N. Joshi for the appellant.

CORAM : A.M. KHANWILKAR, J.
DATED : 5TH JULY, 2007

P.C.

The only contention raised before this court is that the view taken by the two courts below on the issue in respect of the properties in para 1C of the plaint being barred by principle of Order 2 Rule 2 of CPC. IN my opinion, the appellate court was right in observing that the said properties were not in the hands of father of the plaintiff Ganpati Kale at the relevant time when the first suit for partition was filed. For that reason, the said property was not included in the former suit. The question of seeking relief of partition will arise only if the property is vested and included as joint family property. As the litigation before the Tenancy Court was pending and subjudice, the said property, by no stretch of imagination, can be said to have become part of the joint family property available for partition when the former suit was filed. Thus understood, the relief now claimed cannot be said to be barred by principle of Order 2 Rule 2 of the Code. No substantial question of law arises for consideration. Dismissed.

(A.M. KHANWILKAR, J.)